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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/621,423	07/18/2003	Terry A. Miller	MILLERT-1	1748

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EXAMINER

VALENTI, ANDREA M

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 04/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/621,423

Applicant(s)

MILLER ET AL.

Examiner

Andrea M. Valenti

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 February 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3,5-13 and 15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3,5-13 and 15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 8, and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 6,007,882 to Worcester.

Regarding Claims 1, 8 and 15, Worcester teaches a reusable floral arrangement assembly and method comprising: a water (Worcester Fig. 1 W) impermeable tray (Worcester Fig. 1 #2) having a top surface (Worcester Fig. 1 #10 inside), a bottom surface (Worcester Fig. 1 #10 outside) a continuous side wall (Worcester Fig. 1 #6) that extends upwardly from said top surface; a disposable foam structure having a base level (Worcester Fig. 1 #38) and at least one other level disposed atop said base level (Worcester Fig. 1 P), wherein said base level rests upon said top surface of said tray within an area defined by said continuous side wall, and wherein said base level and said at least one other level differ in size (Worcester Fig. 1 #38 and P, both elements have the same cross hatching thus they appear to be constructed of the same foam material and are different sizes, also applicant has not claimed a physical separation between the different size levels and thus Worcester's statement Col. 3 line 14-15 also teaches different levels of different sizes one on top of each other Worcester Fig. 1 #28, 30, 32); and a grid work (Worcester Fig. 1 F) extending over said foam structure, said

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grid work having an open bottom edge that selectively engages said continuous wall of said tray with a snap connection (Worcester Col. 3 line 42 and Col. 6 line 27), wherein said grid work envelopes said foam structure and holds said foam structure in a set position on said tray while said grid work demarcates said foam structure into a plurality of evenly distributed areas.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,007,882 to Worcester in view of U.S. Patent No. 2,765,585 to Smithers.

Regarding Claims 3 and 9, Worcester is silent on the tray including at least one prong that extends up into the foam structure. However, Smithers teaches that it is old and notoriously well-known to provide a spike extending from a tray to secure a foam structure (Smithers Fig. 2 #6 and Col. 3 line 13). It would have been obvious to one of ordinary skill in the art to modify the teachings of Worcester with the teachings of Smithers at the time of the invention for the advantage of securing the base in the center of the tray and to prevent displacement of the base if the device is repositioned in a display, shipped, etc.

Claims 5-7 and 10-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,007,882 to Worcester in view of U.S. Patent No. 2,482,278 to Koerner.

Regarding Claims 5-7 and 10-12, Worcester is silent on a support extending from the tray for supporting the tray that is selectively attachable and removable from the support, and that the support is selected from the group consisting of bouquet handles, centerpiece stands, and ground spikes. However, Koerner teaches a tray support with a ground spike support selectively attachable and removable from the tray (Koerner Fig. 1 # 7 and 4 and Fig. 2). It would have been obvious to one of ordinary skill in the art to modify the teachings of Worcester with the teachings of Koerner at the time of the invention for the advantage of securing the device to the ground to prevent it from blowing over in high winds or if accidentally knocked into.

Claim 13 rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,007,882 to Worcester.

Regarding Claim 13, Worcester teaches that the foam structure can take on any shape configuration (Worcester Col. 2 line 65), but is silent on implicitly teachings the cog shape. However, it would have been obvious to one of ordinary skill in the art to modify the teachings of Worcester at the time of the invention since the modification is merely a change in shape to create an aesthetic appeal and does not present a patentably distinct limitation [*In re Seid*, 161 F.2d 229, 231, 73 USPQ 431, 433 (CCPA 1947)]

Response to Arguments

Applicant's arguments with respect to claims 1, 3, 5-13, and 15 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion


Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrea M. Valenti whose telephone number is 703-305-3010. The examiner can normally be reached on 7:30am-5pm M-F; Alternating Fridays Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 703-308-2574. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Andrea M. Valenti
Patent Examiner
Art Unit 3643


Peter M. Poon
Supervisory Patent Examiner
Technology Center 3600

4/1/05

31 March 2005